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UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANA GOLD, TAMMY EMERY, EDWIN  
 MENDEZ, LAURA NORRIS, DONALD  
 FURSMAN, and JOHN TRIANA, on behalf  
 of themselves and all others similarly situated,

Plaintiffs,

v.

LUMBER LIQUIDATORS, INC., a Delaware  
 corporation; and DOES 1 through 200, inclusive,

Defendants.

No. 3:14-cv-05373-TEH

**FOURTH AMENDED CLASS  
 ACTION COMPLAINT**

CLASS ACTION

JURY TRIAL DEMAND

The Honorable Thelton E. Henderson

Complaint Filed: December 8, 2014

Through the undersigned counsel, Plaintiffs DANA GOLD, TAMMY EMERY,  
 EDWIN MENDEZ, LAURA NORRIS, DONALD FURSMAN, and JOHN TRIANA on behalf  
 of themselves and all others similarly situated (“Plaintiffs”), file this fourth amended class

1 action complaint against Defendant Lumber Liquidators, Inc. (“Defendant” or “Lumber  
2 Liquidators”). On personal knowledge of their own circumstances and upon investigation and  
3 information and belief of their counsel, Plaintiffs aver the following:

#### 4 **INTRODUCTION**

5 1. Defendant develops, manufactures, advertises, sells, and distributes bamboo  
6 flooring under the brand name Morning Star Strand Bamboo Flooring (the “Product”)  
7 throughout the United States for installation in homes and other structures.

8 2. Defendant markets and warrants that the Product is durable and meets industry  
9 standards, and markets and warrants that the Product has a thirty (30) year warranty.  
10 Defendant provided a reasonable expectation to consumers and the industry that the Product  
11 would have a usable lifetime of at least thirty (30) years.

12 3. Contrary to Defendant’s advertising and representations, the Product is subject  
13 to premature cracking, splitting, warping, and shrinking, all well before the warranted useful  
14 life.

15 4. The Product’s various modes of failure potentially cause damage to other  
16 building components and render the Product susceptible to premature failure.

17 5. Plaintiffs bring this action to seek redress for damages caused by Defendant’s  
18 wrongful conduct.

#### 19 **JURISDICTION**

20 6. This Court has jurisdiction over this case under 28 U.S.C. 1332(d)(2) in that: (1)  
21 this action is a class action with more than one hundred (100) Class Members; (2) Defendant  
22 Lumber Liquidators, Inc. is a Delaware corporation, based in the state of Virginia, and is thus a  
23 citizen of the state of Delaware; (3) Plaintiffs and all Class Members are United States citizens;  
24 and (4) the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest  
25 and costs.

**VENUE**

7. Venue in this Court is proper: (1) pursuant to 28 U.S.C. 1391(a)(1) in that Defendant does sufficient business in this District to subject it to personal jurisdiction herein; and (2) pursuant to 28 U.S.C. 1391(a)(2) in that a substantial part of the events or omissions giving rise to the claim occurred in this District.

**INTRADISTRICT VENUE**

8. Venue in this Division of the Northern District is proper because a substantial part of the events or omissions which give rise to the claim occurred in Contra Costa County.

**PARTIES**

9. Plaintiff Dana Gold (“Plaintiff Gold”) is a California resident and owns a home located at 1192 Bacon Way in Lafayette, California.

10. Plaintiff Tammy Emery (“Plaintiff Emery”) is a West Virginia resident and owns a home located at 219 Picket Avenue in Inwood, West Virginia.

11. Plaintiff Edwin Mendez (“Plaintiff Mendez”) is an Illinois resident and owns a home located at 2154 Kemmerer Lane in Bollingbrook, Illinois.

12. Plaintiff Laura Norris (“Plaintiff Norris”) is a Minnesota resident and owns a home located at 7327 West 110th Street in Bloomington, Minnesota.

13. Plaintiff Donald Fursman (“Plaintiff Fursman”) is a Pennsylvania resident and owns a home located at 626 Trimble Blvd. in Brookhaven, Pennsylvania.

14. Plaintiff John Triana (“Plaintiff Triana”) is a Florida resident and owns a home located at 24 Captiva Drive in Ponte Verde Beach, Florida.

15. Defendant Lumber Liquidators, Inc. is a Delaware corporation with its principal place of business in Toano, Virginia. Plaintiffs are informed and believe that Defendant conducts business within the United States, and more specifically within the state of California. Also on information and belief, Plaintiffs allege that Defendant was responsible for, or

1 otherwise involved in, the development, manufacture, marketing, sales, warranting and  
2 distribution of the Product.

3 16. Plaintiffs are ignorant of the true names and capacities of Defendants sued  
4 herein as Does 1 through 100, inclusive, (“Doe Defendants”) and therefore sues these Doe  
5 Defendants by fictitious names. Plaintiffs will amend this Complaint to allege the true names  
6 and capacities of these fictitiously-named Doe Defendants when they are ascertained. Each of  
7 the fictitiously-named Doe Defendants is responsible for the conduct alleged in this Complaint  
8 and Plaintiffs’ damages were actually and proximately caused by the conduct of the fictitiously  
9 named Doe Defendants.

10 17. Plaintiffs are informed and believe, and on that basis allege, that each of these  
11 Doe Defendants was the agent, joint venture, and/or employee of Defendant and/or the Doe  
12 Defendants, and in doing the things hereinafter alleged, were acting within the course and  
13 scope of the agency, joint venture, and employment with the advance knowledge, acquiescence,  
14 or subsequent ratification of Defendant and each and every other Doe Defendant.

### 15 **FACTUAL ALLEGATIONS**

#### 16 **B. Plaintiff Gold’s Factual Allegations**

17 18. Plaintiff Gold is a California resident and owns a home located at 1192 Bacon  
18 Way in Lafayette, California.

19 19. Before purchasing the Product, Plaintiff Gold visited her local Lumber  
20 Liquidators store in Concord, California. There, she spoke with the sales manager who  
21 convinced her to purchase the Product rather than traditional hardwood flooring.

22 20. In making his sales pitch, the sales manager described how the Product was  
23 made, discussed the quality of the materials used, and discussed the high quality of  
24 manufacture.

1           21.     The sales manager informed Plaintiff Gold that the Product was harder and more  
2 durable than real wood, and that, if she dropped a can of cat food on the Product, it would not  
3 dent, unlike hardwood, and that the Product was virtually scratch and dent resistant.

4           22.     The sales manager also informed Plaintiff Gold that the Product was at least  
5 two-and-a-half times stronger than Red Oak.

6           23.     The sales manager also informed Plaintiff Gold that the Product had a lengthy  
7 warranty but she was not given the warranty or informed of its terms before her purchase.  
8 Although Plaintiff Gold does not recall the length of the warranty, she does recall it was long  
9 and implied to her that the Product would last that length of time.

10          24.     In reliance on the information she had been given by Defendant, Plaintiff Gold  
11 purchased the Product and, in early October 2013, Plaintiff Gold used the services of a licensed  
12 flooring contractor to install the Product in her home. Within weeks of installation, and while  
13 her home remained unoccupied, Plaintiff Gold observed initial defects with the Product. She  
14 observed the Product was scratching easily and splintering.

15          25.     She notified Defendant by phone on October 30, 2013. The customer service  
16 representative requested she complete a “General Disclosure Statement” to begin the claims  
17 process. Plaintiff Gold completed the General Disclosure Statement, and mailed it to  
18 Defendant’s claims department.

19          26.     On or about December 2, 2013, Richard King of Inspect Solutions, a company  
20 retained by Defendant, inspected the Product installed at Plaintiff Gold’s home. He drafted a  
21 report on or about December 6, 2013, in which he concluded that Plaintiff Gold and the  
22 installers were completely at fault and no Product defects existed.

23          27.     The Product continues to manifest defects to the present day, including warping,  
24 splitting, buckling, and shrinking.

1           28.     On September 4, 2014, Plaintiff Gold placed Defendant on notice of these  
2 defects via a Consumers Legal Remedies Act notice (Cal. Civil Code §1782), attached as  
3 Exhibit A hereto.

4     **C.     Plaintiff Emery's Factual Allegations**

5           29.     Plaintiff Emery is a West Virginia resident and owns a home located at  
6 219 Picket Avenue in Inwood, West Virginia.

7           30.     Before purchasing the Product, Plaintiff Emery was prompted by a local  
8 television advertisement about the cost of bamboo flooring to visit her local Martinsburg  
9 Lumber Liquidators store. At the store, she viewed samples of the Product and spoke with the  
10 manager, William S. Dyess, about the Product.

11          31.     Mr. Dyess informed Plaintiff Emery that the Product was “made from the  
12 hardest wood.”

13          32.     Mr. Dyess provided Plaintiff Emery with a demonstration of the hardness of the  
14 Product by hitting a sample of the Product with another piece of wood to demonstrate its  
15 durability.

16          33.     Plaintiff Emery also reviewed a brochure about the Product and was given a six-  
17 inch sample to take home with her.

18          34.     Plaintiff Emery was also told the Product had a 30 year warranty but did not  
19 review the warranty terms before purchase. She understood that the 30-year warranty implied  
20 that the Product would last for that period of time.

21          35.     On July 10, 2014, in reliance on the demonstration, samples, and information  
22 she had been provided by Defendant, Plaintiff Emery purchased 517 square feet of the Product  
23 from Lumber Liquidators.

24          36.     On August 4, 2014, the Product was installed in her living and dining rooms and  
25 two hallways.

1           37.     The installation was conducted by Falling Water Floor, who was referred to  
2 Plaintiff Emery by Defendant.

3           38.     The cost of the installation was \$4,794.59.

4           39.     Within only a few weeks after installation, Plaintiff Emery noticed that the  
5 Product was delaminating, warping, splitting, shrinking, and scratching, and generally  
6 deteriorating in various places.

7           40.     On four occasions, Falling Water Floor Installation had to make repairs to  
8 Plaintiff Emery's floor.

9           41.     On December 15, 2014, Plaintiff Emery contacted Defendant to put them on  
10 notice that her floor was failing and that Falling Water Floor's repair efforts were futile.  
11 Instead of immediately taking reasonable steps to replace Plaintiff Emery's flooring, in a letter  
12 presumably incorrectly dated "January 5, 2015," Defendant's Customer Care Team stated that  
13 they "assigned her claim to James L."

14           42.     The Product continues to manifest defects to the present day.

15           43.     Plaintiff Emery put Defendant on notice of her claim under the West Virginia  
16 Consumer Credit and Protection Act, W. Va. Code §§ 46A-6 *et seq.*, in a letter dated February  
17 10, 2015, attached as Exhibit B, hereto.

18     **D.    Plaintiff Mendez's Factual Allegations**

19           44.     Plaintiff Mendez is an Illinois resident and owns a home located at  
20 2154 Kemmerer Lane in Bolingbrook, Illinois.

21           45.     Before purchasing the Product, Plaintiff Mendez visited Defendant's website  
22 and his local Lumber Liquidators store in Bollingbrook, Illinois (Store 1086).

23           46.     Plaintiff Mendez recalls that Defendant's website advertised the Product as  
24 "much harder than most hardwoods."

1           47.     At his local store, Plaintiff Mendez spoke with various employees who stated  
2 that the Product was “much stronger than oak and most hardwoods” and that the Product  
3 “wouldn’t crack, wouldn’t bend,” and that it was the “strongest, best quality product.”

4           48.     Also at his local store, Plaintiff Mendez observed a store display and  
5 demonstration in which store personnel attempted to put a nail through a board of the Product  
6 to demonstrate its durability. Between August 9 and September 18, 2014, in reliance on the  
7 store display, the demonstration, and the information he had been given by Defendant, Plaintiff  
8 Mendez purchased approximately 1,434 square feet of the Product from his local Lumber  
9 Liquidators store located in Bollingbrook, Illinois (Store 1086).

10          49.     Plaintiff Mendez noticed that the invoices he was given referred to a warranty  
11 but did not receive a copy of the warranty.

12          50.     Installation was conducted by GS Home Remodels and was completed around  
13 mid-October 2014. Plaintiff Mendez spent approximately \$9,117—\$3,022.50 for labor,  
14 \$5,634.34 for materials and other installation supplies from Defendant, and approximately \$460  
15 for replacement of trim that had to be removed in order to install the Product.

16          51.     In addition to becoming sick from the smells associated with his new flooring, in  
17 or around September 2014, while installation of the Product was ongoing, Plaintiff Mendez  
18 noticed that the glue sold to him by Defendant provided little if any adhesion between the  
19 flooring and subfloor.

20          52.     Plaintiff Mendez notified Defendant of this issue and, and at the request of the  
21 Defendant’s “Customer Care Team,” submitted a General Disclosure Statement. In response,  
22 as communicated by Customer Relations Specialist “Maggie T.,” Defendant denied all  
23 responsibility for this issue, attributing the problems to insufficient adhesive coverage. After  
24 Plaintiff Mendez continued to complain about the glue issue, Defendant offered Plaintiff  
25 Mendez \$500 to resolve the specific issue. Plaintiff Mendez signed a release solely related to  
26 the glue issue on October 8, 2014.  
27



1           53.     Soon after he resolved the glue issue, Plaintiff Mendez began to notice that the  
2 flooring was buckling and shrinking in several areas.

3           54.     The Product continues to manifest defects to the present day.

4     **E.     Plaintiff Norris' Factual Allegations**

5           55.     Plaintiff Norris is a Minnesota resident and owns a home located at 7327 West  
6 110th Street in Bloomington, Minnesota.

7           56.     Before purchasing the Product, Plaintiff Norris was prompted by a local  
8 television advertisement regarding the flooring products sold at Lumber Liquidators to contact  
9 Defendant.

10          57.     Plaintiff Norris contacted Defendant by telephone to learn about the different  
11 flooring options. During the call, Plaintiff Norris inquired about hardwood, laminate, and  
12 bamboo flooring. The customer service representative advised Plaintiff Norris to purchase the  
13 Product, stating that it was the most durable option.

14          58.     Soon after speaking with the Defendant's customer service representative,  
15 Plaintiff Norris visited her local Lumber Liquidators store in Burnsville, Minnesota. There, she  
16 spoke with a sales associate who explained to her that the Product is much stronger than  
17 traditional hardwood flooring.

18          59.     In order to demonstrate the durability of the Product, the sales associate showed  
19 Plaintiff Norris a large, approximately 6' x 8' sample of the Product, which was located next to  
20 the main entrance of the store.

21          60.     As part of his sales pitch, the sales associate explained that Lumber Liquidators  
22 stands behind its products and that the Product is supported by a warranty. The sales associate,  
23 however, did not review the terms of the warranty with Plaintiff Norris or provide a copy for  
24 Plaintiff Norris to review prior to purchasing the Product.

25          61.     In August 2014, and in reliance on the information she had been given by  
26 Defendant over the telephone and in the store, Plaintiff Norris purchased the Product.  
27

1           62. Plaintiff Norris used the services of a licensed contractor to install the Product in  
2 her home in September 2014.

3           63. Within two months of installation, Plaintiff Norris observed that the Product was  
4 cupping, shrinking, warping, and splitting.

5           64. In or around November 2014, Plaintiff Norris contacted Defendant via telephone  
6 regarding the problems she was experiencing with the Product. The customer service  
7 representative requested that Plaintiff Norris complete a “General Disclosure Statement” to  
8 begin the claims process. Plaintiff Norris completed the General Disclosure Statement, and  
9 mailed it to Defendant’s claims department.

10 **F. Plaintiff Fursman’s Factual Allegations**

11           65. Plaintiff Fursman is Pennsylvania resident and owns a home located at  
12 626 Trimble Blvd. in Brookhaven, Pennsylvania.

13           66. Before purchasing the Product, Plaintiff Fursman visited his local Lumber  
14 Liquidators store in Claymont, Delaware on two occasions. Plaintiff Fursman’s first visit was  
15 in July 2014 and his second visit was in August 2014.

16           67. During his first visit, Plaintiff Fursman spoke with a Lumber Liquidators sales  
17 representative who emphasized the high quality and durability of the Product as well as the  
18 superior performance of the Product as compared to other hardwood flooring products.

19           68. The sales representative informed Plaintiff Fursman that the Product was  
20 “harder and more durable than real wood,” “remarkably tougher, harder, stronger than normal  
21 hardwoods,” “more water resistant than normal hardwood floors,” “superior and better quality  
22 than other hardwoods,” and “came with a thirty year warranty.”

23           69. In touting the hardness and durability of the Product, the sales representative  
24 provided Plaintiff Fursman with a demonstration by hitting a sample of the Product with an  
25 object, which did not dent the flooring sample.

1           70. Plaintiff Fursman also reviewed product brochures for the Product as well as  
2 other hardwood flooring products, which he took home.

3           71. In addition, Plaintiff Fursman was given an eight to ten inch sample of the  
4 Product to take home.

5           72. Plaintiff Fursman returned to his local Lumber Liquidators store in Claymont,  
6 Delaware for his second visit in August 2014.

7           73. During this second visit, Plaintiff Fursman spoke with a Lumber Liquidators  
8 sales representative who again emphasized the high quality and durability of the Product as  
9 well as the superior performance of the Product as compared to other hardwood flooring  
10 products.

11           74. The sales representative reiterated the same sales pitch as the first sales  
12 representative and informed Plaintiff Fursman that the Product was harder and more durable  
13 than real wood, remarkably tougher, harder, stronger than normal hardwoods, more water  
14 resistant than normal hardwood floors, was superior and better quality than other hardwoods,  
15 and came with a thirty year warranty.

16           75. Plaintiff Fursman was given an additional eight to ten inch sample of the  
17 Product to take home.

18           76. After completing his second visits to a Lumber Liquidators store, Plaintiff  
19 Fursman reviewed the product brochures he took home as well as the information on  
20 Defendant's website regarding the Product. The information reviewed and relied upon by  
21 Plaintiff Fursman included, but was not limited to, the following statements:

- 22           a. "They're finely crafted to ensure they're free of defects."  
23           b. "Each Morning Star floor is manufactured to be exceptionally durable so  
24 it withstands the rigors of everyday life."  
25           c. "Morning Star Bamboo is two to two-and-a-half times harder than red  
26 oak, so it holds up well to "pretty much anything you can put it through."  
27

1 d. "To make strand bamboo, shredded bamboo fibers are compressed under  
2 extreme heat and pressure. This manufacturing process yields flooring that is even harder and  
3 denser than traditional bamboo floors."

4 e. "Morning Star Bamboo Flooring is one of the best bamboo floors on the  
5 market today. It is produced from old growth bamboo reeds that are at least 4 years old,  
6 thereby increasing hardness. Morning Star Bamboo Flooring creates a naturally beautiful and  
7 ecologically friendly product that evokes a feeling of luxury."

8 77. After his visits to his local Lumber Liquidators stores, Plaintiff Fursman also  
9 reviewed the Product's limited warranty and installation instructions.

10 78. Plaintiff Fursman also reviewed and relied on Defendant's representations that  
11 its Product meets accepted industry standards, including ASTM International.

12 79. Based on the samples, demonstration, and information provided by Defendant in  
13 its brochures, on its website, and by its sales representatives, including the Product's limited  
14 warranty, installation instructions, and marketing and advertising materials, Plaintiff Fursman,  
15 purchased 597.30 square feet of the Product from Defendant on or around September 30, 2014.  
16 He paid \$2,802.54 for the Product.

17 80. Prior to installation, and in accordance with the installation instructions, the  
18 Product was acclimated in the room in which the Product was to be installed from date of  
19 purchase, September 30, 2014, until the last week of October 2014.

20 81. After the product was properly acclimated in accordance with the installation  
21 instructions, Plaintiff Fursman installed the Product in his home's living room, dining room,  
22 and kitchen during the period of October 23-29, 2014.

23 82. After installation, Plaintiff Fursman observed that the Product was excessively  
24 shrinking throughout his home. The shrinkage was so severe that it created large gaps between  
25 the Product slats and the baseboards. In some areas, the shrinkage produced three-inch gaps  
26 between the Product and the baseboards.  
27

1           83.     On or around March 12, 2014, as a result of the excessive shrinkage of the  
2 Product, Plaintiff Fursman contacted his local Lumber Liquidators store, where he purchased  
3 the Product, regarding the defective nature of the Product. He was instructed by his local  
4 Lumber Liquidators store to call (800) HARDWOOD and report his claim.

5           84.     On or around March 12, 2014, Plaintiff Fursman called (800) HARDWOOD  
6 and spoke to a Lumber Liquidators claims representative about the premature failure of the  
7 Product.

8           85.     On April 13, 2015, Plaintiff Fursman received a letter from Defendant's  
9 Customer Care Team indicating that his claim had been assigned to a customer care  
10 representative.

11           86.     Shortly thereafter, Plaintiff Fursman properly and completely filled out  
12 Defendant's warranty claim form and submitted it to Defendant along with all of the requested  
13 information and photographs of the Product.

14           87.     On May 11, 2015, Plaintiff Fursman received a letter from Defendant denying  
15 his warranty claim and indicating that the gapping issue he was experiencing was the result of  
16 either inadequate installation or environmental factors in his home. The letter further stated  
17 that because the gapping is typically not a manufacturing issue, Defendant does not order an  
18 inspection of the flooring.

19     **G.    Plaintiff Triana's Factual Allegations**

20           88.     Plaintiff Triana is a Florida resident and owns a home located at 24 Captiva  
21 Drive in Ponte Vedra Beach, Florida.

22           89.     Before purchasing the Product, Plaintiff Triana considered several retailers, who  
23 sent representatives to his home to take measurements and discuss various flooring options.

24           90.     With a dog living in the home and his grandchildren visiting frequently,  
25 Plaintiff Triana's most important criteria for the new floor included stability and  
26 hardness/durability.  
27

1           91. In researching various flooring materials and brands online, Plaintiff Triana  
2 looked into the Product on Defendant's website, where he recalls reading claims touting the  
3 Product's hardness relative to other flooring materials and other bamboo flooring products.

4           92. In addition, Defendant's representatives with whom Plaintiff Triana spoke at his  
5 home and later at the Jacksonville, Florida store recommended the Product as the best option  
6 for his needs.

7           93. These individuals represented that the Product was very stable and very hard—  
8 two-and-a-half times harder than hardwood flooring.

9           94. Furthermore, they represented that the Product was "carbonized" and heat-  
10 treated, under extreme pressure, to remove natural oils in the material making it much harder  
11 than traditional bamboo flooring.

12           95. A salesperson in the Jacksonville store provided a demonstration in support of  
13 these representations, hitting the Product with a hammer to show it would not dent.

14           96. Plaintiff Triana also recalls representations by Defendant that the Product was  
15 protected by a 30 year warranty, though he did not receive a copy of the warranty, nor was he  
16 made aware of its specific terms, before his purchase of the Product. However the length of the  
17 warranty implied that the Product would last.

18           97. In reliance on Defendant's representations, Plaintiff Triana purchased  
19 approximately 820 square feet of the Product from the Jacksonville Lumber Liquidators store  
20 in April and May 2012, at a total cost of \$4,726.38.

21           98. Defendant provided Plaintiff Triana a list of three approved contractors who  
22 could install the flooring, and, based on the specific recommendation of the salesperson who  
23 sold him the flooring, Plaintiff Triana selected Coastline Customs Floors, who installed the  
24 flooring in his home at a total (labor) cost of \$3,075.41.

1           99. Not long after the Product was installed, Plaintiff Triana began noticing that the  
2 Product was cracking, splitting, peeling, and cupping, making the floor increasingly  
3 unattractive and unsafe.

4           100. In or around January 2014, Plaintiff Triana notified Defendant of these  
5 problems. The in-store representative with whom he spoke provided no assistance. He also  
6 called Defendant's main customer service group, which responded by assigning his claim to  
7 "Natasha D." and asking him to complete a "General Disclosure Statement." Plaintiff Triana  
8 filled out and returned this form on or around March 3, 2014.

9           101. Rather than assessing Plaintiff Triana's claim based on that information or its  
10 further investigation, Defendant responded that Plaintiff Triana would need to hire an inspector  
11 to come to his home, assess the problems, and provide the results to Defendant (all at Plaintiff  
12 Triana's own expense).

13           102. The Product continues to manifest the aforementioned defects to the present  
14 day.

#### 15   **H. Product Manufacturing Process and Representations**

16           103. The Product is made by slicing bamboo into strips, cutting the strips into desired  
17 widths, immersing the strips in an acid solution to eliminate sugars and starch, (in some cases)  
18 staining the material, binding it together into planks using an adhesive, and finally applying a  
19 curing lacquer. Plaintiffs are informed and believe that Defendant has been manufacturing and  
20 selling the Product since approximately 2008. Defendant has sold the Product to thousands of  
21 consumers throughout the United States, including California. The Product was and is  
22 marketed and sold for use in homes and other structures.

23           104. Defendant concealed from and/or failed to disclose to Plaintiffs and Class  
24 Members the defective nature of the Product.

25               a. Plaintiffs are informed and believe that Defendant used a variety of  
26 methods to communicate representations about the durability and quality of the Product and  
27

1 about its warranty to the general public and contractors in the flooring installation business.  
 2 These representations were published on Internet sites such as YouTube, on Defendant's  
 3 website, at trade, building, and home shows typically open to the general public and contractors  
 4 who service ultimate consumers of the Product, and at Defendant's product retail stores.  
 5 Defendant communicated a common and repeated theme regarding the Product:

- 6 (i) "Morning Star Bamboo is two to two-and-a-half times harder  
 7 than red oak, so it holds up well to "pretty much anything you  
 8 can put it through."
- 9 (ii) "To make strand bamboo, shredded bamboo fibers are  
 10 compressed under extreme heat and pressure. This  
 11 manufacturing process yields flooring that is even harder and  
 12 more dense than traditional bamboo floors."
- 13 (iii) "Morning Star Bamboo Flooring ... is produced from old growth  
 14 bamboo reeds that are at least 4 years old, thereby increasing  
 15 hardness. Morning Star Bamboo Flooring creates a naturally  
 16 beautiful and ecologically friendly product that evokes a feeling  
 17 of luxury."

18 105. Defendant states that its flooring meets accepted industry standards, stating on  
 19 its website: "QUALITY GUARANTEE: This Flooring is constructed and tested to meet or  
 20 exceed industry standards for emissions" -- including ASTM 4066 (wear resistance), ASTM  
 21 3359 (Finish Adhesion) and ASTM 4442 (Moisture Content). *See*  
 22 [http://www.lumberliquidators.com/assets/images/product\\_page/Morning\\_Star\\_10023638\\_HS\\_](http://www.lumberliquidators.com/assets/images/product_page/Morning_Star_10023638_HS_Str_Antique.pdf)  
 23 [Str\\_Antique.pdf](http://www.lumberliquidators.com/assets/images/product_page/Morning_Star_10023638_HS_Str_Antique.pdf) (citing various "Technical Specifications").

24 106. The hardness of the Product is a misleading indicator of whether it can  
 25 withstand scratching and denting better than other hardwood flooring products.  
 26  
 27



1           107. Defendant knew that it did not manufacture the Product in such a way as to  
2 withstand scratching and denting better than other hardwood flooring products, such as red oak.

3           108. By focusing on the hardness of the Product rather than the other factors that  
4 cause the defects experienced by Plaintiffs and Class Members, Defendant intended to mislead  
5 consumers into believing its representations that the Product “does not scratch easily” and is  
6 “virtually scratch and dent resistant.” These statements were and are false and misleading  
7 because Defendant deliberately failed to disclose that factors other than hardness will result in  
8 the Product being easily scratched and dented.

9           109. Defendants also failed to disclose that its manufacturing process did not create a  
10 product that could prevent scratches and dents better than other hardwood flooring products.

11           110. Defendant represents that the Product meets ASTM 4442, the standard for  
12 moisture content. But ASTM 4442 actually prescribes the process for drying wood and wood  
13 particle material but does not prescribe the acceptable moisture content of the final, dried  
14 product.

15           111. Indeed, bamboo, like wood flooring products, is hygroscopic, meaning it gains  
16 and loses moisture as the air around it gains and loses moisture.

17           112. The typical moisture content in wood flooring products is 6% to 9%. *See*  
18 [http://www.hardwoodfloorsmag.com/installation/understand-wood-floor-moisture-content-](http://www.hardwoodfloorsmag.com/installation/understand-wood-floor-moisture-content-dimensional-change.html)  
19 [dimensional-change.html](http://www.hardwoodfloorsmag.com/installation/understand-wood-floor-moisture-content-dimensional-change.html) (last visited December 16, 2015);  
20 <http://www.greenbuildingsupply.com/Not-All-Bamboo-is-Created-Equal> (last visited  
21 December 16, 2015).

22           113. By claiming that the Product meets moisture content standard ASTM 4442,  
23 Defendant is deliberately misleading consumers to believe that ASTM 4442 means that the  
24 Product’s moisture content is within an acceptable range.

25           114. Defendant’s installation instructions provide that the Product may contain up to  
26 12% moisture at installation – 3% more than the expected standard. *See*  
27

1 [http://www.lumberliquidators.com/assets/images/installation/morning\\_star Clic.pdf](http://www.lumberliquidators.com/assets/images/installation/morning_star Clic.pdf) (last visited  
2 December 16, 2015).

3 115. Defendant fails to disclose to consumers that the Product may contain an  
4 elevated moisture content such that even after acclimatization it will fail of its essential purpose  
5 and crack, cup, warp, gap, shrink, and otherwise degrade in a defective manner.

6 116. Defendant continues to advertise and sell the Product for use in homes and other  
7 structures, omitting to disclose to Plaintiffs and Class Members, their agents, or contractors  
8 material facts concerning the Product, including, but not limited to, concealing that the Product  
9 was defectively formulated, was and is susceptible to warping, splitting, shrinking, and  
10 splintering, does not otherwise perform as represented, and fails far in advance of its purported  
11 thirty year warranted life. All of these facts are material to a reasonable consumer. The  
12 Product did not perform in accordance with the reasonable expectations of Plaintiffs and Class  
13 Members in that it was not durable and suitable for use as a flooring system in their homes and  
14 other structures.

15 117. The Product is a manufactured wood product that is defectively designed, tested,  
16 and manufactured, and will warp, buckle, splinter, and unreasonably scratch and dent when  
17 used in its intended manner. These failures are common in the Product regardless of when,  
18 where, or how it is installed.

19 118. As a result of Defendant's misconduct, Plaintiffs and Class Member have  
20 suffered actual damages in that the flooring in their homes and other structures has prematurely  
21 failed and will continue to do so, potentially damaging other building elements, causing  
22 continuous and progressive damage to property, and requiring Plaintiffs and Class Members to  
23 expend thousands of dollars to repair or replace the flooring long before the expiration of the  
24 "useful life" of the Product as represented by Defendant.

1           119. Due to the defective nature of the Product, it is not sufficiently durable to serve  
2 as flooring. The following photographs depict some of the problems Plaintiffs and others have  
3 experienced with the Product.



23           120. Because of the relatively small size of the typical damages, and the modest  
24 resources of most homeowners and of the individual Class Members, it is unlikely that most  
25 Class Members could afford to seek recovery against Defendant on their own. A class action is  
26  
27

1 therefore the only viable, economical, and rational means for Class Members to recover from  
 2 Defendant for the damages they have caused.

3 **I. Defendant's Knowledge of and Notice that its Flooring was Defective**

4 121. Defendant is well aware of the problems related to the cracking, splitting,  
 5 warping, cupping, scratching, and denting of the Product. It has received warranty claims and  
 6 complaints from customers (like those submitted by the Named Plaintiffs). In addition,  
 7 websites such as [www.mythreecents.com](http://www.mythreecents.com) and [www.consumeraffairs.com](http://www.consumeraffairs.com) contain complaints  
 8 about the Product dating back to 2011 and 2012 – which further continue to put the Defendant  
 9 on notice concerning the defective nature of the Product.

10 122. Upon information and belief, Defendant pays to be a member of  
 11 [www.consumeraffairs.com](http://www.consumeraffairs.com), which means that it is notified of each complaint and has the option  
 12 of responding to each complaint. A review of this website demonstrates that Defendant does  
 13 review and respond to customer posts on [www.consumeraffairs.com](http://www.consumeraffairs.com).

14 123. The following is an example of a complaint about the Product from October 2,  
 15 2013 on [www.consumeraffairs.com/homeowners/lumber\\_liquidators.html?page=12](http://www.consumeraffairs.com/homeowners/lumber_liquidators.html?page=12) (last  
 16 visited December 16, 2015):

17 judy of Ione, CA

18 Oct. 2, 2013 Verified Reviewer

19 We purchased dark stranded bamboo flooring from Lumber  
 20 Liquidators. We were very particular to request a very durable  
 21 floor that would not scratch easily and had the best resistance for  
 22 moisture spills etc. This flooring was highly recommended by  
 23 their salesman as one of the most durable. We installed this  
 24 flooring throughout our entire downstairs living room, dining  
 25 room, and kitchen. This flooring now has scratches everywhere!!  
 26 Scratches from everything and anything that is slid across the  
 27 floor such as: unoccupied bar stools that have protective plastic  
 caps, TV trays that were only slid forward enough to allow us to  
 eat while sitting on the couch, and even an empty 5 gallon bucket  
 when slid a couple of inches. There are many, many scratches all  
 over the house and we have no idea how they got there.

1 All of these scratches show up as bright white lines on the dark  
 2 flooring which obviously was not treated well enough to make  
 3 the surface as durable as we were told. We have no pets, no  
 4 children at home, no high heels, and all of the heavy furniture  
 5 have the felt pads to protect from scratching the floor. The  
 6 flooring was only installed in April/May of this year. We have a  
 7 thirty year warranty on the flooring and have called the Lumber  
 8 Liquidators customer services department to complain about the  
 9 flooring and see what they will do to honor the product warranty.

10 We are waiting for Lumber Liquidators to get back to us. How  
 11 disappointing to spend so much money on a product  
 12 recommended by Lumber Liquidators sales and yet it absolutely  
 13 does not meet the standards we requested. DO NOT BUY FROM  
 14 LUMBER LIQUIDATORS!!!! They sell less than quality  
 15 materials!!!!

16 124. The following complaints are also from [www.consumeraffairs.com](http://www.consumeraffairs.com) and relate to  
 17 complaints made to Defendant between 2011 and 2013:

18 I purchased \$6000 of morningstar bamboo from Lumber  
 19 Liquidators in Jan 2012 and \$3000 more in adjacent room on  
 20 same floor in April 2012. Approximately 6 months after  
 21 installation the \$6000 floor began to show gaps and shrinkage.  
 22 The 2nd installation has been trouble free. I contacted the LL  
 23 store and they said not our problem. Contacted LL customer  
 24 service and they told me it was my fault due to humidity levels in  
 25 my home. If that were the case the \$3000 floor would also show  
 26 gaps and shrinkage since they are next to each other! Their  
 27 salesman never mentioned any problem with this wood and  
 humidity. Salesman said the wood was "tougher than oak". What  
 a lie! It scratches plenty! They offered \$200 on a \$1000 repair  
 contingent on me waving any future claims. What a joke!<sup>1</sup>

Can someone please tell me if there is a group from here in Texas  
 that is getting together to bring a class action against LL? We  
 purchased 1200 sq. ft. of Morning Star Bamboo Flooring in  
 November and it is cupping EVERYWHERE. We came home  
 from being gone over the weekend and now it is actually  
 buckling up. From EVERYTHING I have read, it is defective  
 product we were sold and do NOT expect to get any help from

---

<sup>1</sup> [https://www.consumeraffairs.com/homeowners/lumber\\_liquidators.html?page=9](https://www.consumeraffairs.com/homeowners/lumber_liquidators.html?page=9) (last visited December 16, 2015).

1 LL. As of now, they have been completely useless in taking care  
 2 of my problem floor. I WILL continue to go through the motions  
 3 to hopefully get my money for the flooring refunded and the cost  
 4 to have it pulled up reimbursed!!! I do NOT want this junk in my  
 5 home. If anyone has information, please forward it to me. When  
 you hire a lawyer for something like this, does LL have to pay the  
 attorney or do you have to? I do NOT have the money to hire and  
 pay an attorney.<sup>2</sup>

6 Lost first level contents and flooring from Sandy. January 2013,  
 7 made purchase of 800 sq ft of Morning Star Bamboo, \$3661.78.  
 8 Had their installers, Palermo to home to inspect and recommend  
 9 how and when to install (another \$1100). Had delivery, allowed  
 10 floor to acclimate for specified 3-5 days. Their installers returned  
 11 to install. By end of March, had some gaps. Called Lumber  
 12 Liquidators, they called installers. Was assured that with full year  
 13 of warranty for installation and product, allow it to go thru  
 14 summer months. July noticed scratches. While scratches are  
 15 normal, these were white, not the bamboo color. Made claim to  
 16 LL, was told to mail balance of floor for inspection. They  
 17 received, said floor not at fault, never returned floor. Dec 2013,  
 18 gaps grew to over 1/2 inch, separation from walls. Called Lumber  
 19 Liquidators. Made claim on Dec. 2, repeated claim on Dec 13,  
 20 2013. January 17th, began follow up and no one called us.  
 21 Googled issue online. Found we were one of many. Inspections  
 22 began from LL and their installers, Palermo. They agreed  
 23 separation not normal - many homes in area with issue. Went to  
 24 two of the LL stores. They agreed with issue and fault of floor  
 25 and had numerous issues with customers and made changes to  
 26 how they sell and allow acclimation of product. Three inspections  
 27 were done, no issue at home cited. March inspection found  
 moisture level now low in home. They are now blaming us. No  
 one has record of 3 other inspections. Our gaps are all thru home  
 from the front door on. As large as 1 inch in some spots.  
 Unsightly and embarrassing. We had none of these issues with  
 our floor before Sandy in its 5 year life. It is not our home, it is  
 the product. Lumber Liquidators knows it. Every salesperson you  
 ask in their store in my NY area cautions the purchaser not to buy  
 this product. I don't know if the product was too wet when  
 manufactured, or too dry or from endangered Tiger habitat as

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<sup>2</sup> [https://www.consumeraffairs.com/homeowners/lumber\\_liquidators.html?page=10](https://www.consumeraffairs.com/homeowners/lumber_liquidators.html?page=10) (last visited December 16, 2015).

1           stated online, but we are so frustrated and embarrassed by our  
2           home's floor every day.”<sup>3</sup>

3           I bought 1000 square feet of Morning Star Bamboo from Lumber  
4           Liquidators in November 2011 after consulting with the sales  
5           associates in the Perrysburg, OH store. We received the product,  
6           allowed it to acclimate indoors for several weeks and then had it  
7           installed by the installer recommended by the company. About  
8           one month later, the floor began to gap, snap, crackle and pop all  
9           over the place. Our installer could not be reached for some time. I  
10          called the store that referred me to corporate. The proper  
11          warranty protocol was followed and several weeks later, nothing!  
12          The customer service rep is mysteriously gone and no one will  
13          help. Unreturned phone calls and emails continue. I need to list  
14          my home to sell in the next month, meanwhile my floor is  
15          disintegrating.<sup>4</sup>

16           125. In fact, on information and belief, Defendant started excluding any negative  
17          reviews from its own website starting in at least 2010.

18           126. Other websites include similar customer complaints. For instance, on  
19          <http://www.trulia.com>, there is a string of complaints concerning almost immediate failure of  
20          the Product and related ignored warranty claims:

21           **crabbyburton, Home Buyer, Basking Ridge, NJ**

22           I am having the same problem! House is bone dry- yet after 6  
23           months our floor looks awful, the edges are cupping and the  
24           boards are the finish is bubbling and cracking. Looks awful!! I  
25           have filed a warranty claim but haven't heard back-

26           Fri Nov 29, 2013<sup>5</sup>

27           **somis53, Home Buyer, 11727**

28           I had the exact same problem as you. I was told by the sales  
29           person that it would be great on a cement slab. Within 3 to 4  
30           months Joints separated, floor cupped and in certain areas  
31           discolored, got very dark. When I called lumber liq. they said it

32           <sup>3</sup> [https://www.consumeraffairs.com/homeowners/lumber\\_liquidators.html?page=10](https://www.consumeraffairs.com/homeowners/lumber_liquidators.html?page=10) (last visited December 16,  
33          2015).

34           <sup>4</sup> [http://www.consumeraffairs.com/homeowners/lumber\\_liquidators.html?page=14](http://www.consumeraffairs.com/homeowners/lumber_liquidators.html?page=14) (last visited December 16,  
35          2015).

36           <sup>5</sup> [http://www.trulia.com/voices/Remodel\\_and\\_Renovate/Has\\_anyone\\_tried\\_the\\_bamboo\\_floors\\_from\\_lumber\\_liq-  
37          51225](http://www.trulia.com/voices/Remodel_and_Renovate/Has_anyone_tried_the_bamboo_floors_from_lumber_liq-51225) (last visited December 16, 2015).



1 shouldn't have been installed on a slab because of the moisture.  
 2 They took no responsibility and blamed it on the installer. And  
 3 now I'm concerned about the amount of formaldehyde it  
 4 contains.<sup>6</sup>

5 Sun Mar 1, 2015

6 127. Indeed, Defendant's conduct shows actual notice and knowledge of the  
 7 Product's defects as it responded directly to complaints and attempted to attribute reported  
 8 problems on installation issues. For instance, in 2012, Defendant responded to a complaint  
 9 posted on [http://lumber-liquidators.pissedconsumer.com/buyer-beware-defective-product-](http://lumber-liquidators.pissedconsumer.com/buyer-beware-defective-product-lumber-liquidators-20120328308399.html)  
 10 [lumber-liquidators-20120328308399.html](http://lumber-liquidators.pissedconsumer.com/buyer-beware-defective-product-lumber-liquidators-20120328308399.html) (last visited December 16, 2015):

11 **Dir. Customer Care \_ LL Mar 31, 2012**

12 Sales associates answer questions and offer guidance as needed.  
 13 A final choice is made by a consumer when they agree and  
 14 purchase material, so staff never makes anyone buy any  
 15 particular item, but advises them based on exchanges of  
 16 information during the sales process. The FINAL DECISION for  
 17 any flooring installation no matter where you shop comes from  
 18 the installers onsite assessment of the project. Your installer  
 19 (Joseph) is ultimately responsible for a projects needs and we  
 20 noted on 3.20.12 that he never read the instructions, so the  
 21 qualified installer was not properly educated to install this  
 22 material as evident in your complaint. This is publicly verifiable  
 23 on our website (Customer Care page) where the installation  
 24 instructions can be viewed to support the above mentioned  
 25 statement. Michelle from Customer Relations is well educated  
 26 and capable. The dimpling is not an ongoing problem, rather the  
 27 result of improper installation as noted the installer did not read  
 this information until the problem surfaced. The instructions state  
 (one of several examples) "Owner and installer are solely and  
 jointly responsible for site conditions, pre-installation moisture  
 checking of new floor and subfloor and must ensure that all  
 conditions and specifications listed in this guide have been  
 thoroughly met prior to Installation of hardwood floor." The  
 installers likely upset for failing to read the document because he  
 failed to follow direction, so this is an installation concern and we  
 do not fix installer mistakes as we're not responsible for  
 independent installer errors" Not [*sic*] supplier ever is. A good

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<sup>6</sup>*Id.*



1 reputation is earned when directions are reviewed and adhered to,  
 2 so we disagree with your assessment of his credentials in this  
 3 case. Unfortunately, this is not a product defect but installer error  
 4 meaning it's not covered under the warranty. The other product  
 5 installed was obviously conducted following direction as an  
 6 example of what a floor can look like when instructions are  
 7 followed. Sorry to hear this happened. We sell thousands of  
 8 bamboo floors each week without issue and the return business  
 9 alone accounts for most of these sales. People are satisfied when  
 10 the instructions are followed and this is a terrible way to learn the  
 importance of those documents. Yes " Everyone be aware to  
 review the warranty and the install instructions to avoid this from  
 happening on your project. We're taking additional steps April to  
 provide even more information about what a consumer can do to  
 further help avoid these situations from happening. Always check  
 installer references and oversee the project so the job meets your  
 satisfaction within the first 25% installed at a minimum.

11 128. On information and belief, to date, Defendant continues to review customer  
 12 complaints online and, instead of offering reasonable remedies for customers, responds by  
 13 blaming defects with the Product on care and/or installation:

14 **LLResponse, Just Looking, Toano, VA**

15 LL Response: Reviewing the dated and current postings we find a  
 16 need for consumer education to understand how flooring is to be  
 17 cared for before, during, and after installation. Installing flooring  
 18 without reviewing the installation instructions or failing to review  
 19 the credentials of their hired installers is never recommended and  
 20 leads to problems. If you rely solely on the installer to make all  
 21 the project decisions on your behalf is a common mistake and  
 22 complaining about board selection, quality of work and care  
 23 given to the floor during the process can all be avoided by being  
 24 present and overseeing the work performed. We make every  
 25 effort to educate consumers and the one thing about the flooring  
 26 business is all flooring products require the same type of  
 27 acclimation, pre-installation testing, installation technique, proper  
 application of the floor to include moisture protection, and finally  
 proper ongoing maintenance of the floor to include temperature  
 and humidity controls. A common theme with gapping concerns  
 stems from customers refusing to install transitions for floating  
 floor systems, or improper application of transitions such as T-  
 moldings allowing the floor to expand and contract as designed.  
 Application of the floor is just as important as choosing the color  
 or style of flooring for your home. We can ask questions at the

point of sale, but ultimately the installer has the final say on whether the floor type is the right one for the scope of your project. Hire a professional with the installation backed by a warranty, but know that a product warranty covers the finish wearing down to the wood layer, or core as it may be. Scratches, dents, chipping, cupping, buckling and other issues are not a covered event and point to other installation and care issues. This does not change when you shop somewhere else and the best advice is to read the warranty, follow the instructions, hire a flooring contractor not a general contractor to install your floor, and follow the care instructions. Thousands of people shop everyday with us and have a wonderful experience. Choosing the right floor and caring for it after installation leads to complete satisfaction with a warranty that covers finish wear through the period offered. Flooring requires care like any other investment, so please visit our site for more information or assistance if you have questions. It can be rather frustrating to get flooring advice from others who may not have taken the proper steps to install the floor, or care for it according to the instructions. If you need assistance please locate the Customer Care tab on the upper right hand corner of our main web page, or call 1800HARDWOOD.

Wed May 7, 2014

**LLResponse, Just Looking, Toano, VA**

The warranty does not cover scratches or dents - no flooring warranty does - this is a care issue and not something a manufacturer or seller pays for. I have a scratch on my car and don't expect Ford to pay for the repair. This is a matter of understanding what you are responsible for versus the seller.

Wed May 7, 2014

129. Similarly, the Better Business Bureau ("BBB") website reports that, since 2013, 819 complaints against Defendant have been resolved, and 605 complaints against Defendant remain unresolved, some of which relate to the defective nature of the Product.

130. Like [www.consumeraffairs.com](http://www.consumeraffairs.com), the BBB notifies Defendant of each complaint and Defendant has the option of responding to the consumer making the complaint.

131. On information and belief, Defendant's CEO was put on notice that the company is knowingly selling a product containing defects and his response was to issue a refund without demanding the customer go through the warranty process:

Morning Star bamboo flooring from LL seems to be a major issue. I installed 1800sqft using a licensed flooring contractor after labor day 2014. I left the product on studs inside the house in an empty room for over a month as directed by salesman at LL; with a fan blowing from the floor and ceiling fan above. I cut off the ends of the boxes also as directed. Within a week; the floor started to cup in the dining room in front of the china cabinet and is now cupping at various places throughout the house. LL customer service replied to my letter of complaint with the same reply; cupping is caused from moisture above and below the wood. We installed with MS adhesive directly to prepared concrete pad of house we just purchased. Seems to me LL is knowingly selling product that has systemic issues. I wrote to the CEO about being charged "restocking" fee on \$10,000 purchase. I was not happy to be charged because I ended up with 14 extras cartons with only 1 carton that was waste. Installer wasted very little product. CEO issued a refund to us after he received a letter. In my opinion and 35 years in retail management; this is product liability. I am writing to the CEO now to voice my disgust. I also believe LL is knowingly selling "wet" NOT KILN DRIED product. 2 flooring contractors independently walked my home and stated installation was done correctly in there *[sic.]* opinion. I believe legal action will be necessary. I don't think the CEO will venture from their customer support teams reply.<sup>7</sup>

**J. Defendant's Warranty Practices and Procedures Also Put Them on Notice of the Products' Defects**

132. When consumers complaint to their local Lumber Liquidators store about the Product's defects, they are directed to contact the corporate customer care department for assistance.

133. Defendant's corporate customer care department has each customer fill out a "General Disclosure Statement," which includes a description of the Product, its mill code and production date, how long it was acclimatized, whether it was installed professionally, and a description of the defects that have appeared.

134. Defendant then determines whether to order an inspection of the flooring or not.

<sup>7</sup> <http://www.4inspirationsphotographyblog.com/suzanne-mcgrath-photograp/2013/04/a-product-review-morningstar-bamboo-click-floors.html> (last visited January 16, 2015).

135. Inevitably, Defendant determines that the defects complained of are the result of poor installation and denies the claim. *See, e.g.*, ¶¶ 155, 156, 158-60, *supra*.

136. Indeed, after this Complaint was publicized 64 comments were received, including the following two about Product purchased in 2013 that describe Defendant's practice of always blaming the consumer:

Purchased 1400 S.F. of Morningstar carbonized strand bamboo in July 2013 and had it professionally installed by their installer. Same problems as everyone else speaks of. Worst problems are shrinking and gaps. Still continues to shrink a year and a half later. Went through entire claim process with Lumber Liquidators. Arbitrarily turned down at every step. Paid for two different professional flooring inspectors, and on their advice paid for professional re-installs of large sections twice. Shrinking and gaps continue to happen. I have detailed and contemporaneous notes on all events and conversations, and would like to be part of the class action suit.<sup>8</sup>

I have had the same issue with my LL Morning Star Bamboo flooring (we had over 2000 sqft installed). The floors began to warp and buckle within 3 months after installation in October 2013. I went through the entire claim process with LL and received a letter from them informing me that the issue with my flooring has nothing to do with the product itself and everything to do with a moisture issue (despite purchasing the most expensive moisture barrier/adhesive they sell). They will take NO responsibility for anything. I have fought with the installer and my contractor, and am now purchasing new flooring and working out the rest with my contractor. I am now concerned about the formaldehyde. I have a neurological condition and cannot have this s\*&t in my home!!! Please send me some information as to what I can do, and whether ALL of the flooring needs to come out.<sup>9</sup>

### **CLASS ACTION ALLEGATIONS**

137. Plaintiffs bring this action as a class action pursuant to Rule 23(b)(2) and Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and the class. This

<sup>8</sup> <http://topclassactions.com/lawsuit-settlements/lawsuit-news/45644-lumber-liquidators-facing-bamboo-flooring-class-action/> (last visited December 16, 2015).

<sup>9</sup> *Id.*

1 action satisfies the numerosity, commonality, typicality, adequacy, predominance, and  
 2 superiority requirements as set forth in Rule 23(a) and Rule 23(b)(3).

3 138. Plaintiffs advance this action on behalf of the following classes (together, the  
 4 “Class” or “Class Members”):

5 California Class: All individuals in the State of California who  
 6 purchased, for personal, family, or household use, Morning Star  
 7 Strand Bamboo Flooring manufactured and sold by Lumber  
 8 Liquidators, Inc. from January 1, 2008 to present. Excluded from  
 9 the Class are Defendants, their legal representatives, assigns and  
 10 successors and any entity in which Defendants have a controlling  
 11 interest. Also excluded is the judge to whom this case is assigned  
 12 and any member of the judge’s immediate family and judicial  
 13 staff.

14 Illinois Class: All individuals in the State of Illinois who  
 15 purchased, for personal, family, or household use, Morning Star  
 16 Strand Bamboo Flooring manufactured and sold by Lumber  
 17 Liquidators, Inc. from January 1, 2008 to present. Excluded from  
 18 the Class are Defendants, their legal representatives, assigns and  
 19 successors and any entity in which Defendants have a controlling  
 20 interest. Also excluded is the judge to whom this case is assigned  
 21 and any member of the judge’s immediate family and judicial  
 22 staff.

23 West Virginia Class: All individuals in the State of West  
 24 Virginia who purchased, for personal, family, or household use,  
 25 Morning Star Strand Bamboo Flooring manufactured and sold by  
 26 Lumber Liquidators, Inc. from January 1, 2008 to present.  
 27 Excluded from the Class are Defendants, their legal  
 representatives, assigns and successors and any entity in which  
 Defendants have a controlling interest. Also excluded is the  
 judge to whom this case is assigned and any member of the  
 judge’s immediate family and judicial staff.

Minnesota Class: All individuals in the State of Minnesota who  
 purchased, for personal, family, or household use, Morning Star  
 Strand Bamboo Flooring manufactured and sold by Lumber  
 Liquidators, Inc. from January 1, 2008 to present. Excluded from  
 the Class are Defendants, their legal representatives, assigns and  
 successors and any entity in which Defendants have a controlling  
 interest. Also excluded is the judge to whom this case is assigned  
 and any member of the judge’s immediate family and judicial  
 staff.

Pennsylvania Class: All individuals in the State of Pennsylvania who purchased, for personal, family, or household use, Morning Star Strand Bamboo Flooring manufactured and sold by Lumber Liquidators, Inc. from January 1, 2008 to present. Excluded from the Class are Defendants, their legal representatives, assigns and successors and any entity in which Defendants have a controlling interest. Also excluded is the judge to whom this case is assigned and any member of the judge's immediate family and judicial staff.

Florida Class: All individuals in the State of Florida who purchased, for personal, family, or household use, Morning Star Strand Bamboo Flooring manufactured and sold by Lumber Liquidators, Inc. from January 1, 2008 to present. Excluded from the Class are Defendants, their legal representatives, assigns and successors and any entity in which Defendants have a controlling interest. Also excluded is the judge to whom this case is assigned and any member of the judge's immediate family and judicial staff.

Claims for personal injury are specifically excluded from the Class.

139. Numerosity (Rule 23(a)(1)). Although the actual size of the Classes is uncertain, Plaintiffs are informed and believes the Classes are comprised of many of thousands of property owners, making joinder impractical. The disposition of the claims of these Class Members in a single class action will provide substantial benefits to all parties and to the Court.

140. Communality (Rule 23(a)(2)). There exist questions of law and fact common to all Class Members. Common questions include, but are not limited to, the following:

a. Whether the Product is subject to premature failure well in advance of its represented thirty-year useful life;

b. Whether the Product is not suitable for use as a long-term flooring product;

c. Whether Defendant knew, or should have known, of the defective nature of the Product before making available for purchase and use by the Plaintiffs and Class Members;

1           d.       Whether Defendant failed to disclose to Plaintiffs and Class Members  
2 the defective nature of the Product;

3           e.       Whether Defendant, through making misleading representations of  
4 material facts regarding the Product's hardness and omitting other material facts regarding the  
5 particular susceptibility of the Product to cupping, warping, scratching, denting, and other  
6 defects, had a duty to disclose full information regarding the Product's characteristics;

7           f.       Whether Defendant's failure to disclose material facts violated Business  
8 Professions Code Section 17200;

9           g.       Whether Defendant's warranty practices, by repeatedly concealing the  
10 true nature of the defects in the Product through the use of diversionary tactics and false  
11 investigative reports, violated Business & Professions Code Section 17200;

12           h.       Whether Defendant's failure to inform purchasers that the Product was  
13 susceptible to the failures alleged herein was a material omission, the nondisclosure of which  
14 was a deceptive sales practice under the consumer protection statutes of applicable state law;

15           i.       Whether Defendant owed a duty to Plaintiffs and Class Members to  
16 exercise reasonable and ordinary care in the testing, design, production, manufacturing,  
17 warranting and marketing of the Product;

18           j.       Whether Defendant breached its duties to the Plaintiffs and Class  
19 Members by designing, manufacturing, producing, marketing, advertising, and selling defective  
20 flooring to Plaintiffs and Class Members;

21           k.       Whether Defendant had a duty to Plaintiffs and Class Members to  
22 disclose the true nature of the Product;

23           l.       Whether the facts not disclosed by Defendant to Plaintiffs and Class  
24 Member are material facts;



1           m.       Whether Defendant knew, or should have known that the Product would  
2 prematurely fail, is not suitable for use as flooring in residences or businesses, and is otherwise  
3 is not as represented by Defendant;

4           n.       Whether Defendant violated California's Consumers Legal Remedies  
5 Act (California Civil Code § 1750 *et seq.*), when it concealed, made partial misleading  
6 representations, or failed to disclose the true nature of the Product, and led consumers to  
7 believe, through its advertising, warranties, and other express representations that the Product  
8 had characteristics that it did not actually have;

9           o.       Whether, in committing the acts alleged herein, Defendant engaged in  
10 unfair competition and in an unfair business practice or practices within the meaning of  
11 California Business and Professions Code § 17200;

12           p.       Whether such acts or practices were illegal, unfair, or fraudulent within  
13 the meaning of California Business and Professions Code § 17200;

14           q.       Whether Plaintiffs and Class Members are entitled to compensatory  
15 damages, restitution, and the amounts thereof respectively;

16           r.       Whether Defendant should be declared financially responsible for  
17 notifying all Class Members of the defective Product and for the costs and expenses of repair  
18 and replacement of all defective flooring materials and providing restitution of monies paid and  
19 inadequate value given;

20           s.       Whether Defendant should be ordered to disgorge, for the benefit of  
21 Class Members, all or part of their ill-gotten profits received from the sale of defective Product  
22 and/or to make full restitution to Plaintiffs and Class Members; and

23           t.       Whether Defendant should be enjoined from continuing to market the  
24 Product, as defined herein, utilizing misleading misrepresentations and omission of material  
25 facts.



1           141. Typicality (Rule 23(a)(3)). The claim of the representative Plaintiffs are typical  
2 of the claims of Class Members, in that the representative Plaintiffs, like all Class Members,  
3 own a structure in which the defective Product was installed and failed prematurely. The  
4 representative Plaintiffs, like all Class Members, have suffered a common injury: Plaintiffs  
5 will incur the cost of repairing and/or replacing the defective Product in their homes and  
6 repairing any resultant consequential damage to other building components. The factual basis  
7 of Defendant's misconduct is common to all Class Members.

8           142. Adequacy (Rule 23(a)(4)). Plaintiffs will fairly and adequately represent and  
9 protect the interests of the Class. Plaintiffs have retained counsel with substantial experience in  
10 prosecuting consumer class actions, including actions involving defective building products,  
11 failure to disclose material information regarding product performance, and violation of  
12 consumer protection statutes. Plaintiffs and their counsel are committed to vigorously  
13 prosecuting this action on behalf of the Class and have the financial resources to do so. Neither  
14 Plaintiffs nor their counsel have any interests adverse to those of the Class.

15           143. Predominance of Common Questions (Rule 23(b)(3)). Common questions of  
16 law and fact predominant over any questions involving individualized analysis.  
17 Fundamentally, there are no material questions of fact or law that are not common to Class  
18 Members. Common issues of fact include: All Class Members purchased the same Product and  
19 received the same misrepresentations, evasions, and omissions. The performance of the  
20 Product relative to its represented qualities is a common question, as is the Defendant's  
21 knowledge regarding the Product performance and Defendant's uniform omission to Class  
22 Members of these material facts. Common questions of law include whether Defendant's  
23 conduct violates California's consumer protection statutes and other law, and the Class  
24 Members' entitlement to damages and remedies.

25           144. Superiority (Rule 23(b)(3)). Plaintiffs and Class Members have all suffered and  
26 will continue to suffer harm and damages as a result of Defendant's unlawful and wrongful  
27

1 conduct. A class action is superior to other available methods for the fair and efficient  
2 adjudication of the subject controversy. Because of the relatively small size of the individual  
3 Class Members' claims, most Class Members likely would find the cost of litigating their  
4 individual claims to be prohibitive and will have no effective remedy at law. Thus, absent a  
5 class action, Class Members will continue to incur damages and Defendant's misconduct will  
6 proceed without remedy. The class treatment of common questions of law and fact is also  
7 superior to multiple individual actions or piecemeal litigation in that it conserves the resources  
8 of the courts and the litigants and promotes consistency and efficiency of adjudication. There  
9 is no impediment to the management of this action because of the virtual identity of the  
10 common questions of law and fact to all Class Members.

11 145. Injunctive Relief (Rule 23(b)(2)). Defendant has engaged and continues to  
12 engage in business practices which are unfair, unlawful, and/or fraudulent in violation of  
13 California's Unfair Competition Law (Business & Professions Code §§ 17200 *et seq.*) and the  
14 False Advertising Law (Business & Professions Code §§ 17500 *et seq.*) by, among other things,  
15 advertising and representing that the Product has characteristics and benefits that it does not.

16 146. Plaintiffs seek class-wide injunctive relief on grounds consistent with the  
17 standards articulated in Rule 23(b)(2) that establish final injunctive relief as an appropriate  
18 class-wide remedy, in that Defendant continues to advertise the Product, continues to provide  
19 half-truths and misleading information about the Product, and continues to omit to disclose  
20 material facts regarding the Product.

1                   **ESTOPPEL FROM PLEADING THE STATUTE OF LIMITATIONS**

2           147. Defendant knew or reasonably should have known that the Product was  
3 defective before its sale. Defendant intentionally concealed material truths and disclosed half-  
4 truths while at the same time concealing material information that would have corrected  
5 consumers' perceptions, concerning the Product from the general public and Class Members,  
6 while continuing to falsely represent that the Product is fit for its intended use.

7           148. Defendant affirmatively represented to the general public the Product carried a  
8 thirty-year (30) warranty. Through these representations, Defendant created a reasonable  
9 expectation among ordinary consumers and in the construction trades that the Product would  
10 have a useful life of at least thirty (30) years.

11           149. Defendant's acts of fraudulent concealment also include, but are not limited to,  
12 using improper warranty tactics and commissioning sham inspections of Class Members'  
13 flooring in response to complaints in order to mislead consumers as to the cause of the  
14 Product's failures and the true nature of the Product defects.

15           150. Based upon Defendant's misrepresentations and concealment, Defendant is  
16 equitably estopped from asserting a statute-of-limitations defense.

17           151. Alternatively, to the extent Defendant pursued a common policy of diverting  
18 warranty claims or other consumer complaints about the Product through misleading and  
19 erroneous investigation, or delaying tactics that induced Plaintiffs or Class Members to not  
20 assert their rights in a timely manner, Defendant is equitably estopped from asserting a statute-  
21 of-limitations defense.

**FIRST CAUSE OF ACTION**  
**(Violation of Consumers Legal Remedies Act (“CLRA”))**

152. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

153. Defendant and the Doe Defendants are “persons” as defined by California Civil Code §1761(c).

154. Defendant engaged in unfair competition or unfair or deceptive acts or practices in violation of California Civil Code §1770(a)(5) and (a)(7) when Defendant represented, through its advertising and other express representations, that the Product had benefits or characteristics that it did not actually have and when Defendant made misleading statements about the Product’s hardness without further disclosing that factors other than the Product’s hardness can lead to the Product easily scratching and denting and manifesting other defects complained of by Plaintiffs and Class Members. Defendant further violated the CLRA when Defendant falsely represented that the Product was of a particular standard or quality. Finally, Defendant violated the CLRA when it advertised the Product with the intent not to sell it as advertised.

155. Defendant’s deceptive practices were specifically designed to induce Plaintiffs and Class Members to purchase the Product. Defendant engaged in marketing efforts as detailed in the general allegations, to reach Class Members, their agents, and/or third parties on whom they relied to persuade them to purchase and install the Product manufactured by Defendant, or to purchase homes and other structures in which the defective Product manufactured by Defendant has been installed.

156. To this day, Defendant continues to engage in unlawful practices in violation of the CLRA. Defendant continues to conceal the defective nature of the Product, make misleading statements about the Product, and has omitted to disclose, on inquiry from Plaintiffs and Class Members, the Product’s defective propensities.

157. Plaintiffs served Defendant with notice of their violation of the CLRA by serving notice on their General Counsel by certified mail to their corporate offices, on September 4, 2014. A copy of this notice is attached hereto as Exhibit A.

WHEREFORE, Plaintiffs on behalf of themselves and for all others similarly situated, demand a permanent injunction be issued against Defendant to refrain from continued advertising of the Product at issue herein that omits material facts about product performance, injunctive relief forcing Defendant to replace and repair all Product at issue herein for Class Members, consequential damages for Class Members who have replaced or will replace the Product at issue herein, plus costs and attorneys' fees pursuant to California Civil Code §1780(d).

### **SECOND CAUSE OF ACTION**

#### **(Violation of Unfair Competition Law- Unlawful Business Practice)**

158. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this Complaint.

159. California Business and Professions Code §17200 *et seq.* prohibits acts of unfair competition, which includes unlawful business practices.

160. Defendant engaged in unlawful business practices in that Defendant represented, through its advertising, warranties, and other express representations that the Product had characteristics it did not actually have and provided misleading information to Plaintiffs and Class Members about the Product while omitting to disclose information about other characteristics of the Product that cause it to scratch and dent easily and manifest other defects.

161. Defendant violated § 17200 when Defendant falsely represented the Product was of a particular standard or quality, including representations that the Product met industry standards, "virtually scratch and dent resistant," and "two to two and a half times harder than red oak." Defendant further violated the Unfair Competition Law when it unlawfully tested,

1 designed, manufactured, formulated, sold, and introduced in the stream of commerce for  
2 purchase by Plaintiffs, Class Members, and the general public, the defective Product.

3 162. Defendant's deceptive practices constitute an unlawful business practice in that  
4 the practices were specifically designed to induce Plaintiffs, Class Members, and their agents or  
5 third parties upon whom Plaintiffs and Class Members' relied to provide appropriate guidance  
6 regarding suitable flooring products, to purchase on Class Members' behalf the Product and  
7 install the Product, recommend the use of the Product, or to purchase homes and other  
8 structures in which the Product has been installed.

9 163. To this day, Defendant has engaged and continues to engage in unlawful  
10 business practices by concealing the defective nature of the Product and have knowingly  
11 misrepresented to Class Members the Product possess qualities and characteristics it does not  
12 have.

13 164. As a direct and proximate cause of Defendant's unfair and unlawful methods of  
14 competition and unfair, deceptive or unlawful acts or practices, Plaintiffs and Class Members  
15 have suffered actual damages in that they own homes and other structures on which defective  
16 Product is or was installed. The Product has failed and will continue to prematurely fail due to  
17 its poor design, poor manufacture, and unsuitability for its intended purpose, which will require  
18 (or has already required) Plaintiffs and Class Members to incur costs to prematurely repair  
19 and/or replace their floorings.

20 165. As a proximate result of their unlawful, unfair, or fraudulent practices,  
21 Defendant has been unjustly enriched and should be required to make restitution to the  
22 Plaintiffs and Class Members pursuant to §§ 17203 and 17204 of the California Business &  
23 Professions Code.



1 and/or manufacturing techniques, and poor installation guidelines, which will require Plaintiffs  
 2 and Class Members to incur costs to prematurely repair and/or replace their flooring.

### 3 **FOURTH CAUSE OF ACTION**

#### 4 **(Violation of Illinois Consumer Fraud and Deceptive Business Practices Act)**

5 171. Plaintiffs hereby incorporate by reference the allegations contained in all  
 6 preceding paragraphs of this complaint.

7 172. The conduct described in this Complaint constitutes a violation of the Illinois  
 8 Consumer Fraud and Deceptive Business Practices Act, 815 Ill. Comp. Stat. 505/1 *et seq.* (the  
 9 “CFA”), and substantially similar state consumer protection statutes.

10 173. Defendant engaged in unfair or deceptive practices in violation of the CFA when  
 11 it (1) represented that the Product was ASTM acceptable when, at best, it lacked credible  
 12 evidence to support those claims, and, at worst, knew the Product would fail prematurely, was  
 13 not suitable for use as flooring, and otherwise was not as warranted and represented by  
 14 Defendant; (2) failed to disclose to, or concealed from, consumers, installers, and distributors  
 15 material facts about the defective nature of the Product; (3) failed to disclose its own  
 16 knowledge of the defective nature of the Product; and (4) limited its warranty obligations in an  
 17 unfair and unconscionable way in light of its failure to disclose the defective nature of the  
 18 Product.

19 174. Defendant either knew or should have known its Product was defective, would  
 20 fail prematurely, and was not as warranted and represented by Defendant.

21 175. Defendant’s conduct and omissions described herein repeatedly occurred in  
 22 Defendant’s trade or business and were capable of deceiving a substantial portion of the  
 23 consuming public.

24 176. The facts concealed or not disclosed by Defendant are material facts in that  
 25 Plaintiff Mendez, Illinois Class Members, and any reasonable consumer would have considered  
 26 those facts important in deciding whether to purchase the Product or purchase homes or  
 27 structures with flooring applying the Product. Had Plaintiff Mendez and Illinois Class



Members known the Product was defective (and did not meet ASTM or other flooring industry standards), they would not have purchased the Product or they would have either negotiated additional warranty coverage, negotiated a lower price to reflect the risk or simply avoided the risk all together by purchasing different flooring products.

177. Defendant intended that Plaintiff Mendez and Illinois Class Members would rely on the deception by purchasing its Product, unaware of the undisclosed material facts. Defendant knew that Plaintiff Mendez and Illinois Class Members would rely on its product literature and advertisements, statements made by its salespeople and other representations. This conduct constitutes consumer fraud within the meaning of the various consumer protection statutes.

178. Defendant's unlawful conduct is continuing, with no indication that Defendant will cease.

179. As a direct and proximate result of the deceptive, misleading, unfair, and unconscionable practices of Defendant set forth above, Plaintiff Mendez and Illinois Class Members are entitled to actual damages, compensatory damages, penalties, and attorney's fees and costs as set forth in Section 10a of the CFA.

180. The Defendant's deceptive, misleading, unfair and unconscionable practices set forth above were done willfully, wantonly and maliciously entitling Plaintiff Mendez and Illinois Class Members to an award of punitive damages.

WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

**FIFTH CAUSE OF ACTION**  
**(Violation of Pennsylvania Unfair Trade Practices & Consumer Protection Law)**

181. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

182. This Count is brought by Plaintiff Fursman on behalf of himself and Pennsylvania Class Members.

1           183. At all times relevant hereto, Plaintiff Fursman and Pennsylvania Class Members  
2 were “persons” within the meaning of 73 P.S. § 201-2(3).

3           184. Defendant’s conduct, as alleged herein, constituted unfair or deceptive acts or  
4 practices and unfair methods of competition in trade or commerce (within the meaning of  
5 73 P.S. § 201-2(4)), in violation of 73 P.S. § 201-3, and regulations promulgated thereunder,  
6 including the following types of conduct specified in 73 P.S. § 201-2:

7                   a. Representing that goods or services have characteristics or ingredients  
8 that they do not have (§ 201-2(vi));

9                   b. Representing that goods are of a particular standard, quality or grade, if  
10 they are of another (§ 201-2(vii));

11                   c. Advertising goods or services with intent not to sell them as advertised  
12 (§ 201-2(ix)); and

13                   d. Engaging in fraudulent or deceptive conduct that creates a likelihood of  
14 confusion or misunderstanding (§ 201-2(xxi)).

15           185. Defendant’s unfair and deceptive acts and practices (including conduct  
16 prohibited by the provisions cited in subparagraphs (a) through (e) above), as alleged in greater  
17 detail herein, include, but are not limited to: (1) representations that the Product was more  
18 water resistant than hardwood when, at best, it lacked credible evidence to support those  
19 claims, and, at worst, knew the Product would fail prematurely, was not suitable for use as  
20 flooring, and otherwise was not as represented by Defendant; (2) failed to disclose to, or  
21 concealed from, consumers, installers, and distributors material facts about the defective nature  
22 of the Product; and (3) failed to disclose its own knowledge of the defective nature of the  
23 Product.

24           186. As a result of Defendant’s unfair and deceptive acts and practices, Plaintiff  
25 Fursman and Pennsylvania Class Members have suffered ascertainable losses of money or  
26 property within the meaning of 73 P.S. § 201-9.2, which they seek for restitution and/or  
27

1 disgorgement of funds paid to Defendant by Plaintiff Fursman and Pennsylvania Class  
 2 Members to purchase the Product, or the value of the product in their home or structure, or in  
 3 the form of repair and/or replacement of the defective Product on Plaintiff Fursman's and  
 4 Pennsylvania Class Members' homes and other structures.

5 187. Plaintiff Fursman and Pennsylvania Class Members are entitled to recover these  
 6 actual damages or statutory damages of \$100, whichever is greater, plus multiple damages.

#### 7 **SIXTH CAUSE OF ACTION**

#### 8 **(Violation of Minnesota Consumer Fraud Act, M.S.A. § 325F.68, et seq.)**

9 188. Plaintiffs hereby incorporate by reference the allegations contained in all  
 10 preceding paragraphs of this complaint.

11 189. This Count is brought by Plaintiff Norris on behalf of herself and Minnesota  
 12 Class Members.

13 190. At all times relevant hereto, Defendant was a "person" within the meaning of  
 14 M.S.A. § 325F.68(3).

15 191. Defendant's conduct, as alleged herein, constitutes unlawful practices, in  
 16 violation of M.S.A. § 325F.69 subd. 1, including fraud, false pretense, false promises,  
 17 misrepresentations, misleading statements, and/or deceptive practices, with the intent that  
 18 others rely thereon, in connection with the sale of the Product to Plaintiff Norris and Minnesota  
 19 Class Members.

20 192. Defendant's unlawful practices (including fraud, misrepresentation, and  
 21 deceptive practices prohibited by § 325F.69 subd. 1)), as alleged in greater detail herein,  
 22 include, but are not limited to: (1) representations that the Product was not suitable for use as  
 23 flooring, and otherwise was not as warranted and represented by Defendant; (2) failed to  
 24 disclose to, or concealed from, consumers, installers, and distributors material facts about the  
 25 defective nature of the Product; and (3) failed to disclose its own knowledge of the defective  
 26 nature of the Product.  
 27

193. As a result of Defendant's fraud, misrepresentation, and deceptive practices, Plaintiff Norris and Minnesota Class Members have suffered injury within the meaning of M.S.A. § 8.31 subd. 3a, which they seek restitution and/or disgorgement of funds paid to Defendant by Plaintiff Norris and Minnesota Class Members to purchase the Product, or the value of the Product in their home or structure, or in the form of repair and/or replacement of the defective Product on Plaintiff Norris' and Minnesota Class Members' homes and other structures.

194. Plaintiff Norris and Minnesota Class Members also seek injunctive relief pursuant to M.S.A. § 8.31 subd. 3a, directing Defendant to cease the unlawful practices alleged herein and to issue corrective statements and advertising.

195. Plaintiff Norris and Minnesota Class Members are entitled to bring an action for damages and injunctive under M.S.A. § 8.31 subd. 3a, because this action has a public benefit. The public benefit of this action is demonstrated by at least the following:

a. This action seeks injunctive relief in order to stop Defendant from continuing to engage in the fraud, false pretense, false promises, misrepresentations, misleading statements, and/or deceptive practices alleged herein, and to issue corrective statements and advertising, in an effort to protect Minnesota Class Members and members of the public; and

b. Members of the public have been and are concerned about the quality and safety of the Product, as evidenced by, among other things, the thousands of complaints by consumers that can be found on the Internet regarding its defective nature.

**SEVENTH CAUSE OF ACTION**  
**(Violation of West Virginia's Consumer Credit and Protection Act, W. Va. Code**  
**§§ 46A-6 et seq.)**

196. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

197. Defendant published, disseminated and/or circulated oral and written information and matter that tended to and/or did induce, directly and indirectly West Virginia

1 residents, including Plaintiff Emery and West Virginia Class Members to enter into contracts  
2 and agreements to purchase the Product.

3 198. Defendant, acting directly or by agents, servants, employees, conspirators and/or  
4 joint ventures set about to sell, offer for sale, and attempt to sell in West Virginia, for cash or  
5 credit, the Product.

6 199. That the defendants acting as aforesaid set about to and did engage in unfair  
7 methods of competition and unfair or deceptive practices as set forth in West Virginia Code 46-  
8 A-6-102, including, but not limited to:

9 The act, use or employment by any person of any deception,  
10 fraud, false pretense, false promise or misrepresentation, or the  
11 concealment, suppression or omission of any material fact with  
12 the intent that others rely upon such concealment, suppression or  
13 omission, in connection with the sale or advertisement of any  
14 goods or services, whether or not any person has in fact been  
15 misled, deceived or damaged thereby;

16 Advertising, printing, displaying, publishing, distributing, or  
17 broadcasting, or causing to be advertised, printed, displayed,  
18 published, distributed or broadcast in any manner, any statement  
19 or representation with regard to the sale of goods...which is false,  
20 misleading, or deceptive, or which omits to state material  
21 information which is necessary to make the statements therein  
22 not false, misleading or deceptive;

23 Engaging in any other conduct which similarly creates a  
24 likelihood of confusion or misunderstanding.

25 200. That the acts and conduct above violated West Virginia Code, Chapter 46A,  
26 Article 6, Section 101, *et seq.* in that Defendant engaged in unfair and deceptive acts or  
27 practices, including, but not limited to, engaging in part of a scheme or plan to sell the Product  
to the public without disclosing that it was not made from the “hardest wood,” that bamboo is  
not a wood but is actually a grass that is fibrous and flooring made from it is susceptible to  
scratching and denting, and that the Product was not otherwise free from defects. These acts  
and practices had the capacity to deceive a substantial portion of the public.

1           201. As a proximate result of the violation by defendants of the aforesaid statute,  
 2 Plaintiff Emery and West Virginia Class Members suffered an ascertainable loss of money or  
 3 property and Plaintiff Emery and West Virginia Class Members are entitled to recover damages  
 4 all as provided in West Virginia Code, 46A-6-106.

5                                   **EIGHTH CAUSE OF ACTION**  
 6                                   **(Violation of Florida’s Deceptive and Unfair Trade Practices Act**  
 7                                   **Florida Statute § 501.201 *et seq.* (“FDUTPA”))**

8           202. Plaintiffs hereby incorporate by reference the allegations contained in all  
 9 preceding paragraphs of this complaint.

10           203. This cause of action is brought pursuant to the Florida Deceptive and Unfair  
 11 Trade Practices Act, Fla. Stat. § 501.201 *et seq.* The stated purpose of this Act is to “protect  
 12 the consuming public . . . from those who engage in unfair methods of competition, or  
 13 unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.”  
*Id.* §501.202(2).

14           204. Plaintiff Triana and Florida Class Members are “consumers” and the  
 15 transactions at issue in this complaint constitute “trade or commerce” as defined by FDUTPA.  
 16 *See id.* § 501.203(7)-(8).

17           205. FDUTPA declares unlawful “[u]nfair methods of competition, unconscionable  
 18 acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or  
 19 commerce.” *Id.* § 501.204(1)

20           206. Defendant violated FDUTPA by representing to Plaintiff Triana and Florida  
 21 Class Members that the Product had particular qualities, including that the Product was “two-  
 22 and-a-half times harder than hardwood flooring,” and, by virtue of being “carbonized” and/or  
 23 treated “under extreme heat and pressure,” was “much harder than traditional bamboo”—when  
 24 in fact Defendant knew that the Product did not possess these qualities.

25           207. Furthermore, Defendant employed fraud, deception, false promise,  
 26 misrepresentation, and the knowing concealment, suppression, or omission of material facts in  
 27

1 its sale and advertisement of the Product in the State of Florida by: (1) representing that the  
2 Product was ASTM acceptable when, at best, Defendant lacked credible evidence to support  
3 those claims, and, at worst, Defendant knew the Product would fail prematurely and was not  
4 suitable for use as flooring; (2) failing to disclose to, or concealing from, consumers, installers,  
5 and distributors material facts about the defective nature of the Product; and (3) failing to  
6 disclose its own knowledge of the defective nature of the Product.

7 208. Plaintiff Triana and the Florida Class Members directly or indirectly relied upon  
8 Defendant's representations regarding the quality of the Product in their purchase decisions.

9 209. Plaintiff Triana and the Florida Class Members were misled by Defendant's  
10 misrepresentations and omissions because they believed that the Product was harder, stronger,  
11 more durable, and more stable than other flooring materials and other bamboo flooring  
12 products.

13 210. As a direct and proximate result of the FDUTPA violations described above,  
14 Plaintiff Triana and the Florida Class Members have been injured in that they purchased the  
15 defective Product or purchased homes or other structures with the defective Product, based on  
16 the misrepresentations and nondisclosures of material facts alleged above.

17 211. Had Plaintiff Triana and the Florida Class Members known the defective nature  
18 of the Product and the truth concerning Defendant's claims, they would not have purchased or  
19 would not have paid what they did for the Product or their structures.

20 212. As a result of Defendant's practices in violation of FDUTPA, Plaintiff Triana  
21 and Florida Class Members suffered an ascertainable loss in the form of monies paid to  
22 Defendant for the Product that, contrary to Defendant's representations, prematurely failed.

23 213. Accordingly, Plaintiff Triana and Florida Class Members are entitled to such  
24 damages, as well as equitable relief, costs, reasonable attorney's fees, and other relief, as are  
25 permitted under the law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that the Court enter judgment against Defendant, and each of them, and in favor of Plaintiffs, and to award the following relief:

1. Certification of the following classes:
    - a. A California class and appointing Dana Gold as class representative,
    - b. A West Virginia class and appointing Tammy Emery as class representative,
    - c. An Illinois class and appointing Edwin Mendez as class representative,
    - d. An Minnesota class and appointing Laura Norris as class representative,
    - e. A Pennsylvania class and appointing Donald Fursman as class representative, and
    - f. A Florida class and appointing John Triana as class representative;
  2. Appointment of the undersigned as counsel for the proposed Class(es);
  3. A declaration that Defendant's actions complained of herein violate the state consumer protection statutes;
  4. A declaration that Defendant is financially responsible for notifying all Class Members;
  5. Injunctive relief requiring Defendant to replace and/or repair all Products installed in structures owned by the Class;
  6. A declaration that Defendant must disgorge, for the benefit of the Class, all or part of its ill-gotten profits received from the sale of defective Product, and/or to make full restitution to Plaintiffs and the Class Members;
  7. An award of costs and attorneys' fees, as allowed by law, and/or from a common fund created hereby;
  8. Leave to amend this Complaint to conform to the evidence presented at trial;
- and



9. Orders granting such other and further relief as may be appropriate under the circumstances.

**JURY TRIAL DEMAND**

Plaintiffs hereby demand a jury trial for all individual and Class claims so triable.

RESPECTFULLY SUBMITTED AND DATED this 26th day of June, 2017.

ROBINS KAPLAN LLC

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20 *Attorneys for Plaintiffs and Proposed Classes*  
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**LOCAL RULE 5-1(I)(3) STATEMENT**

Pursuant to Local Rule 5-1(i)(3), I hereby attest that in concurrence to the filing of this document permission was obtained from the signatory, and that I will maintain records to support this concurrence by the signatory subject to this document as required under the local rules.

DATED this 26th day of June, 2017.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Beth E. Terrell, CSB #178181  
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CERTIFICATE OF SERVICE

I, Beth E. Terrell, hereby certify that on June 26, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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*Attorneys for Defendant Lumber Liquidators, Inc.*

DATED this 26th day of June, 2017.

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*Attorneys for Plaintiffs and Proposed Class*

— **EXHIBIT A** —

RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP  
ATTORNEYS

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September 3, 2014

***VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED***

Thomas Sullivan, President and CEO  
Lumber Liquidators Inc.  
3000 John Deere Rd.  
Toano, VA, 23168  
(757) 566-7546

**Re: Notice of Violation of California Consumers Legal Remedies Act (Cal. Civ. Code § 1750 et seq.)**

Dear Mr. Sullivan:

Pursuant to California Civil Code section 1782, this letter constitutes notice under the California Consumers Legal Remedies Act, Cal. Civ. Code § 1750 *et seq.* ("the Act") of several violations of the Act by Lumber Liquidators Inc. On behalf of Dana Gold, we hereby notify you as the highest officer and representative of Lumber Liquidators of violations of the Act and Ms. Gold's demand that you remedy such violations within thirty (30) calendar days from your receipt of this letter.

On or around September 2013, Ms. Gold purchased directly from the Lumber Liquidators Inc. store located in Concord, California, your "Morningstar" bamboo flooring. The flooring she purchased is not performing. It is warping, splintering, buckling and shrinking. It is not "durable" and not fit for the purpose for which it is sold. The 30 and 100 year warranty is misleading and creates false expectations.

These representations are unfair methods of competition and unfair or deceptive acts or practices in violation of the Act, including but not limited to:

1. Representing that goods are of a particular standard, quality, or grade when they are not;

RAM, OLSON, CEREGHINO & KOPCZYNSKI LLP

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Thomas Sullivan, President and CEO  
Lumber Liquidators Inc.

*Notice of Violation of California Consumers Legal Remedies Act (Cal. Civ. Code § 1750 et seq.)*

Page 2 of 2

September 3, 2014

On behalf of a class of United States purchasers of Morning Star Bamboo Flooring, we demand that Lumber Liquidators remedy the above violations within thirty (30) days from your receipt of this letter, as required by section 1782(a)(2) of the Act, by refunding the purchase price of these products to all class members and notifying class members that product refunds are available. Failure to meet these demands may subject Lumber Liquidators Inc. to civil liability under the Act and any other law prohibiting unfair competition and unfair or deceptive acts or practices.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey Cereghino', with a large, sweeping loop at the end.

Jeffrey Cereghino



— **EXHIBIT B** —

T: 855.505.5342

*Erica C. Mirabella*

132 BOYLSTON STREET, 5<sup>th</sup> FLR

F: 617.583.1905

MIRABELLA LAW

BOSTON, MA 02116-4606

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February 10, 2015

VIA CERTIFIED MAIL, RRR

Mr. Thomas Sullivan, President and CEO  
Lumber Liquidators  
3000 John Deere Road  
Toano, VA 23168  
(757)566-7546

**Re: Demand for relief under West Virginia Consumer Credit and Protection Act**

Dear Sir or Madam:

Cuneo Gilbert & LaDuca and Mirabella Law are among the counsel representing Tammy Emery of Inwood, West Virginia.

On or around July 10, 2014, Ms. Emery purchased approximately 517 square feet of Morning Star Bamboo Flooring from Lumber Liquidators (hereinafter the “Bamboo Flooring”) from her local Martinsburg Lumber Liquidators. Ms. Emery purchased her Bamboo Flooring after reviewing samples of it at the store and being told by a Lumber Liquidator Manager that it was durable, the best product available, and sold with thirty (30) year warranty.

On or around August 4, 2014, the Bamboo Flooring was installed in her living and dining rooms and two hallways. Within only a few weeks after installation, Ms. Emery noticed that the Bamboo Flooring was delaminating, warping, splitting, shrinking and scratching and generally deteriorating in various places.

The Bamboo Flooring is not “durable” and is not fit for the purpose for which it is sold. The thirty (30) year warranty placed on the product creates false expectations. These representations amount to “[u]nfair methods of competition and unfair or deceptive acts or practices.” *See* W. Va. Code § 46A-6-104. Each of the elements of a colorable claim under this section is present in this situation: “unlawful conduct by the seller, an ascertainable loss on the part of the consumer, and a causal connection between the ascertainable loss and the [seller’s] conduct.” *White v. Wyeth*, 705 S.E.2d 828, 835 (W. Va. 2010). Therefore, this constitutes a violation of the West Virginia Consumer Credit and Protection Act, W. Va. Code §§ 46A-6- et seq. (the “WVCCPA”).

Like Ms. Emery, other similar purchasers across the country also purchased defective Bamboo Flooring and warranties from Lumber Liquidators. Lumber Liquidators knew or should have known that its Bamboo Flooring was defective and would not last the length of its purported

warranty. Nevertheless, Lumber Liquidators continued to warrant and represent its Bamboo Flooring as being top quality and defect-free, and failed to disclose to, and upon belief, did not repair or replace the flooring products in accordance with the terms of its warranties.

Ms. Emery, along with other similarly situated owners of Bamboo Flooring, has suffered damages as a result of Lumber Liquidator's unfair and deceptive business practices. On behalf of Ms. Emery and all other similarly situated purchasers of Morning Star Bamboo Flooring, we demand that Lumber Liquidators remedy the above violations within twenty (20) days of receiving this letter, as required by the WVCCPA, by refunding the purchase price of the Bamboo Flooring to all purchasers and notifying potential class members that refunds are available. Failure to meet these demands may subject Lumber Liquidators to civil liability under the WVCCPA and any other law prohibiting unfair competition and unfair or deceptive acts of practices.

I am available to discuss any reasonable offer of settlement you may wish to make. You may reach me directly at 617-580-8270 or by email at [erica@mirabellaLLC.com](mailto:erica@mirabellaLLC.com).

Very Truly Yours,

A handwritten signature in black ink that reads "Erica C. Mirabella". The signature is written in a cursive, flowing style.

Erica C. Mirabella

ECM/lmm